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11 Attorneys for Plaintiffs

12
13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**
15

16 ANA BIOCINI, individually and as joint
17 successor-in-interest to Decedent HERNAN
18 JARAMILLO; RAFAEL JARAMILLO,
19 individually and as joint successor-in-interest to
20 Decedent HERNAN JARAMILLO; MARIA
21 CLAUDIA JARAMILLO, individually and as
22 joint successor-in-interest to Decedent HERNAN
23 JARAMILLO, DIEGO JARAMILLO,
24 individually and as joint successor-in-interest to
25 Decedent HERNAN JARAMILLO, PATRICIA
26 JARAMILLO, individually and as joint
27 successor-in-interest to Decedent HERNAN
28 JARAMILLO, FELIPE JARAMILLO,
individually and as joint successor-in-interest to
Decedent HERNAN JARAMILLO, JUAN
CARLOS JARAMILLO, individually and as
joint successor-in-interest to Decedent HERNAN
JARAMILLO; and THE ESTATE OF HERNAN
JARAMILLO,

Plaintiffs,

vs.

CITY OF OAKLAND, a municipal corporation;
CARLOS NAVARRO, individually and in his
capacity as an officer for the CITY OF
OAKLAND Police Department; IRA

Case No.: 3:14-cv-03315-TEH

**PLAINTIFFS' REPLY IN SUPPORT OF
MOTION TO SET ASIDE A SETTLEMENT
AGREEMENT**

Date: April 4, 2016

Time: 10:00 a.m.

Location: 12, 19th Floor

Judge: Hon. Thelton E. Henderson

1 ANDERSON, individually and in his capacity as
2 an officer for the CITY OF OAKLAND Police
3 Department; STEVEN STOUT, individually and
4 in his capacity as an officer for the CITY OF
5 OAKLAND Police Department; and DOES 1-
6 25, inclusive, individually and in their official
7 capacity as police officers for the CITY OF
8 OAKLAND, jointly and severally,
9
10 Defendants.

11 **SUMMARY OF ARGUMENT**

12 This matter arises from the unlawful arrest and detention of Hernan Jaramillo (“decedent”),
13 and the wholly unjustified use of excessive force against decedent, resulting in his untimely death on
14 July 8, 2014 at the hands of Defendant Oakland Police Department Officers, Ira Anderson, Steven
15 Stout, and Carlos Navarro (hereinafter and collectively “Defendants”). Plaintiffs, Ana Biocini,
16 Patricia Jaramillo, Felipe Jaramillo, Diego Jaramillo, Rafael Jaramillo, and Maria-Claudia Jaramillo
17 (Decdent’s closest surviving relatives) filed this wrongful death action against Defendants on July 22,
18 2014.

19 The parties participated in multiple Settlement Conferences with Magistrate Judge Laurel
20 Beeler on April 15, 2015 and January 8, 2016, respectively. After the January 8, 2016 Settlement
21 Conference, the parties attempted to enter a settlement agreement, by and through their respective
22 counsel. Subsequently, Plaintiffs ANA BIOCINI, FELIPE JARAMILLO, and PATRICIA
23 JARAMILLO informed their counsel, John L. Burris and DeWitt M. Lacy, that they had not assented
24 to the material terms of the January 8, 2016 Settlement Conference. Plaintiffs consequently filed the
25 instant motion requesting the Court set aside the settlement agreement pursuant to *California Civil*
26 *Code* § 664.6, and on the grounds that setting aside the settlement is necessary because there was not
27 a complete assent to the material terms of the agreement by all Plaintiffs and setting aside the
28 settlement will not prejudice the defendants.

Defendants arguments are primarily arguments regarding their opposition to a Rule 60 motion, and, for
the most part, do not address the substance of Plaintiffs’ Motion to Set Aside the Agreement to Settle based on
California Civil Code § 664.6. Specifically, Defendants argue this Court has no jurisdiction because of its

1 Order of Dismissal signed by the Court on January 12, 2016. Defendants also argue any Rule 60 motion must
2 necessarily fail because there is no fraud, injustice, and that the Plaintiffs exhibited a “mature reflection and
3 deliberate assent” to the material terms of the settlement agreement.

4 Accordingly, Plaintiffs’ Motion to Set Aside the Agreement to Settle should be granted because justice
5 so requires. Defendants have not identified any harm or undue prejudice which would unfairly burden
6 Defendants’ ability to defend themselves in this action. Fact discovery has been closed in this action and the
7 only conducting expert depositions remains as a necessary part of preparation before trial. In addition, setting
8 aside the settlement is the only way to ensure all plaintiffs are given their opportunity to fully litigate their
9 claims against the Defendants.

10 **ARGUMENT**

11 **A. THIS COURT RETAINS JURISDICTION BECAUSE THERE WAS NO MUTUAL** 12 **ASSENT**

13 Plaintiff filed their Motion to Set Aside the Settlement on February 24, 2016 before
14 Defendants mailed payment of the settlement proceeds to the Law Office of John L. Burris on
15 February 26, 2016. No written settlement agreement had been produced or signed by the parties at
16 that time. Judge Beeler never specifically questioned all Plaintiffs in this action about their
17 understanding of the material terms of the final settlement. More importantly, there was a mutual
18 mistake that all parties relied upon in entering the January 8, 2016 settlement agreement. Namely,
19 Plaintiff’s counsel, the Defendants, and Judge Beeler believed that all Plaintiffs had assented to the
20 terms of settlement. However, clearly, Patricia and Felipe Jaramillo did not intend to assent to
21 settlement on January 8, 2016. Accordingly, all the subsequent actions that came as a result of the
22 mistaken belief that all parties agreed to the settlement are invalid, including this Court’s Order
23 dismissing the action with prejudice.

24 There were undeniably questionable circumstances that led to this mistaken belief. Through
25 no fault of the Plaintiffs, communication with all parties was suddenly and unexpectedly halted. At
26 that time, Plaintiffs’ counsel was unable to reestablish communication with the Plaintiffs. However,
27 based on what the Plaintiffs had told Mr. Lacy and Mr. Burris, Mr. Lacy represented to Judge Beeler
28 a mistaken belief of mutual assent. Plaintiff’s counsel contacted both Defendants and Judge Beeler

1 as soon as they understood there may be a problem with the settlement. Similarly, Ana Biocini,
2 communicated her desire to set aside the January 8, 2016 settlement as soon as she realized her
3 siblings had not all consented.¹ Accordingly, Plaintiffs' motion should be granted and the January 8,
4 2016 Settlement should be set aside.

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7 Dated: March 16, 2016

THE LAW OFFICES OF JOHN L. BURRIS

8 /s/ DeWitt M. Lacy
9 DeWitt Lacy
10 Attorneys for Plaintiff
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¹ A true and accurate copy of Ms. Biocini's Letter to her counsel and Judge Beeler is attached to the Declaration of DeWitt M. Lacy as Exhibit 1.